

ECF TRANSCRIPTION SHEET



ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: October 28, 2013

Total Number of Pages: 5

10. Dkt. No. 118 and all prior TROs and Orders to Show Cause are now resolved.

Copies by ECF to: All Counsel
Judge Lewis A. Kaplan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 10/28/13

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NYKOOL, A.B.,

12 Civ. 5754 (LAK)

Plaintiff,

-against-

PACIFIC INTERNATIONAL SERVICES, INC.,
PAN AMERICAN RADING COMPANY, INC.,
FRUIT IMPORTERS AMERICAS, INC.,
PACIFIC GROUP HOLDING, INC.,
ECUADORIAN LINE, INC., SOUTH PACIFIC
SHIPPING CO. LTD., ALVARO FERNANDO
NOBOA PONTON, CARLOS AGUIRRE,
CARLOS AHLSTROM, EDWARD HICKEY and
ROBERT KISSINGER

CONSENT ORDER

Defendants.

-and-

PACIFIC FRUIT INC. and KELSO ENTERPRISES LTD.,

Defendants-in-Interest.
-----X

**ORDER DIRECTING REDI FRESH PRODUCE INC TO PAY ATTACHED
FUNDS INTO THE REGISTRY OF THE DISTRICT COURT**

WHEREAS, on or about August 1, 2013 Plaintiff NYK Cool A.B. sought and obtained an Ex Parte Order of Attachment (the "Attachment Order"); and

WHEREAS, garnishee Redi Fresh Produce, Inc. ("Garnishee") is holding funds reflecting sale proceeds collected from the sale of Bonita brand bananas. Plaintiff has asserted such funds from the sale of Bonita bananas should be restrained by Garnishee pursuant to the Attachment Order. Garnishee has asserted that it owes non-party Truisfruit S.A., the supplier of the Bonita bananas, the sales proceeds collected from Garnishee's sale of Bonita bananas minus a management fee, costs, expenses and legal fees incurred by Garnishee in this action ("Attached

Funds"); and Garnishee and Plaintiff wish to deposit into the Court Registry the Attached Funds; and

WHEREAS, as of the date of this Order, the value of the Attached Funds is \$1,376,787.60; and

WHEREAS, Garnishee asserts that additional sums remain due and owing by third party customers to Garnishee for the sale of Bonita bananas by Garnishee. These funds may or may not be collected due to various issues including alleged quality issues with the bananas. To the extent that efforts are undertaken by Garnishee to collect such funds Plaintiff has consented to a commission of 6.5% of the amount collected from third parties by Garnishee; and

WHEREAS, Garnishee and Plaintiff wish to similarly deposit into the Court Registry the remaining sums due and owing from third parties when, and if, collected minus a 6.5% commission to Garnishee ("Future Bonita Funds"); and

WHEREAS, Garnishee and Plaintiff wish to have Garnishee transfer the Attached Funds and any later obtained Future Bonita Funds into the Registry of the Court and now jointly seek an order directing Redi Fresh Produce, Inc. to pay the Attached Funds and Future Bonita Funds into the Registry of the Court; and

WHEREAS, Plaintiff and Garnishee also seek an order that the Attached Funds and any Future Bonita Funds, on receipt into the Registry of the Court, should be transferred by the Clerk to the Court Registry Investment System, Interest Bearing Account pending further order of the Court; and

IT IS HEREBY ORDERED that:

1. The Attached Funds presently under restraint by Garnishee in the amount of \$1,376,787.60 and any Future Bonita Funds are hereby ordered to be transferred by Redi Fresh Produce, Inc. and deposited in the Court Registry of the United States District Court for the

Southern District of New York. Said transfer is to be accomplished by electronic funds transfer, referencing this case name and number and the amount restrained, to the Clerk of the Court, United States District Court for the Southern District of New York, at U.S. Treasury, Agency Locator #4654, ABA Routing #021030004; and

2. Upon receipt of the aforementioned deposits, the Clerk of the Court, as soon as his office allows, shall prepare the necessary forms for the purpose of placing said funds into the Court Registry Investment System, Interest Bearing Account; and

3. The Clerk shall deduct from the income earned on the investment by the deposited amounts a fee not to exceeding that authorized by the Judicial Conference of the United States and set by the Director of Administrative Office, whenever such income becomes available for deduction from the investment so held without further order of this Court being required; and

4. Statements of interest earned on the deposited funds shall be provided to counsel for the parties periodically, in accordance with the usual practice applicable to the deposit of such sums; and

5. The funds on deposit, together with all accumulated interest, less any authorized registry fees ("available funds"), shall be disbursed in whole or in part as follows:

- A. In accordance with the terms of a joint stipulation submitted by the parties requesting disbursement of part or all of the available funds; or
- B. In accordance with the voluntary reduction of Plaintiffs claim; or
- C. In accordance with any final judgment or award rendered by any Court or arbitration panel of competent jurisdiction, after the exhaustion of any and all appeals or the time in which a party may apply to vacate, modify, or correct the award has elapsed without action; or

D. In accordance with any decision or order of this Honorable Court; and

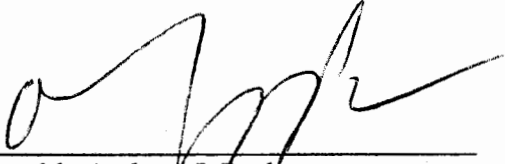
6. To the extent that after disbursement of the funds in accordance with Paragraph 5 above, any further funds remain on deposit in the Registry of the Court, such further funds shall be disbursed in accordance with the joint stipulation of the parties or on motion to this Court; and

7. Upon entry of this Order, Plaintiff's counsel shall serve a signed copy of this Order upon the Clerk of Court, Room 120, and on a Financial Deputy in the Cashier's Office in Room 120; and

8. Redi Fresh Produce, Inc. shall have discharged its obligations as garnishee in this action upon receipt of the Attached Funds into the Registry of the Court subject to its obligations as set forth herein regarding "Future Bonita Funds"; and

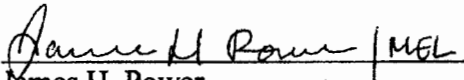
9. In all other respects, the Attached Funds and any Future Bonita Funds, including all interest earned thereon up to and including the date of withdrawal, shall be held pending further order of this Court.

AP 10-04-118 - all prior TRUs & checks to show bank on row
ASSIGNED.
Dated: October 28, 2013



Honorable Andrew J. Peck
United States Magistrate Judge

HON. ANDREW J. PECK
United States Magistrate Judge
Southern District of New York

We consent to the following Order:


James H. Power
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New York, NY 10019

Attorney for Garnishee,
Redi Fresh Produce, Inc


Edward A. Keane
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Attorney for Plaintiff,
NYK Cool A.B.

9/27/13
H. Keane
J. H. Keane